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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 19th August, 2011

+ **W.P.(C) 6010/2011, CM No.12142/2011 (for stay) & CM No.12145/2011 (for direction)**

M/S BHARAT STORES Petitioner

Through: Mr. Puneet Mittal & Mr. Manoj
Kumar, Advocates.

Versus

GOVT. OF NCT OF DELHI & ORS Respondents

Through: Mr. Navralin Choudhary, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. The challenge in this petition is to the order dated 4th August, 2011 of the Assistant Commissioner (North), Department of Food, Supplies & Consumer Affairs, Govt. of Delhi cancelling the authorization earlier granted to the petitioner for running/operating a fair price shop.

2. Admittedly, the said order is appealable before the Additional Commissioner.

3. The petitioner has however preferred this petition for the reason of the Assistant Commissioner, in the order impugned in this petition having mentioned that the “administrative approval of Additional Commissioner (North) has been obtained”. It is the contention of the counsel for the petitioner that the Appellate Authority having already granted the administrative approval for the order of the Assistant Commissioner, has denuded himself from the right to hear the appeal and thus the only remedy available to the petitioner is by way of this petition.

4. I am of the opinion that mere recording by the Assistant Commissioner of the fact that administrative approval had been obtained from the superior administrative authority would not interfere with the hearing of the appeal. This Bench for the last over one month has come across several orders of the Additional Commissioner setting aside the orders of the Assistant Commissioner. The Additional Commissioner while hearing the appeal exercises quasi judicial powers and is not to be influenced by the administrative approval if any given to the orders

impugned before him/her.

5. The Division Bench of this Court in ***P.K. Gupta v. Gold Craft Cooperative Group Housing Society Ltd.*** 1996(37) DRJ 69 held that a matter may come up before the authority, in that case Registrar Co-operative Societies, in two jurisdictions; one, of appeal; the other, of approval. In appeal, the entire subject matter of controversy stands reopened before the appellate authority, appeal is a vested right, parties have to be heard. While approval is an administrative act in which no one can claim a right of hearing or participation. The Supreme Court in ***Vijayadevi Navalkishore Bhartia v. Land Acquisition Officer*** (2003) 5 SCC 83 held that approval is not an appellate function. As distinct therefrom, the Supreme Court in ***Nagendra Nath Bora v. Commr. of Hills Division & Appeals, Assam*** AIR 1958 SC 398 has held that where a right is vested in an authority to hear appeals, it becomes its duty to hear judicially, i.e., to say, in an objective manner, impartially and after giving reasonable opportunity to the parties concerned to place their cases before it. Halsbury's Laws of England were relied upon by the Apex Court to hold that when an administrative body in arriving at its decision has at no stage any form of *lis* before it, it cannot be

said that it is under a duty at any time to act judicially. Lord Haldane in ***Local Government Board v. Arlidge*** [1915] A.C. 120 was quoted to hold that those on whom duty to decide appeal is imposed have to act judicially, deal with the questions raised without bias and must give opportunity to all parties to present their case.

6. The counsel for the petitioner has next contended that the appeals and the applications for stay remain pending before the Additional Commissioner for long and has sought a direction for disposal thereof in a time bound manner.

7. The counsel for the respondents appearing on advance notice has been heard on the aforesaid aspect.

8. The writ petition is therefore disposed of as not maintainable owing to the alternative remedy of appeal being available to the petitioner and with liberty to the petitioner to avail thereof. The Additional Commissioner is directed to dispose of, if not the entire appeal, at least the application for interim relief within four weeks of the appeal being preferred and the appeal latest within eight weeks from the date of filing.

No order as to costs.

Copy of this order be given *Dasti*.

CM Nos.12143-44/2011 (both for exemption)

Allowed, subject to just exceptions.

RAJIV SAHAI ENDLAW, J

AUGUST 19, 2011

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